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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1958.

No. 53.

THE PEOPLE OF THE STATE OF NEW YORK,
Petitioner,
vs.
JOSEPH C. O'NEILL,
Respondent.

On Writ of Certiorari to the Supreme Court of Florida.

BRIEF OF ATTORNEY GENERAL OF KANSAS, AMICUS CURIAE,

In Which the Several States Shown on the Appendix Join Through Their Attorneys General.

JOHN ANDERSON, JR.,
Attorney General of Kansas,
Topeka, Kansas.

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Citations.

Article IV, Section 2, Fourteenth Amendment to the Constitution of the United States	1
Handbook of the Nat'l Conf. of Comr. on Uniform State Laws 1931, p. 122, pp. 417-423	2
Sections 942.01-942.06, Florida Statutes 1955	2

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INTEREST OF THE STATES.

In the present case, the Supreme Court of Florida has held unconstitutional, under the privileges and immunities clauses of Article IV, Section 2 of, and of the Fourteenth Amendment to, the Constitution of the United States, the

"Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings." Sections 942.01-942-06, Florida Statutes 1955. Forty-one other states of the United States and Puerto Rico have adopted statutes substantially identical with the statute of the State of Florida which the Florida Supreme Court held unconstitutional. A list of such states is set forth in Appendix II to this brief. Basically, all of such statutes are modeled upon the Uniform Act to Secure the Attendance of Witnesses From Without the State in Criminal Cases, approved by the National Conference of Commissioners on Uniform State Laws in 1931 (Handbook of the Nat'l Conf. of Comr. on Uniform State Laws 1931, p. 122, pp. 417-423) and revised by the Conference in 1936 (idem, 1936, pp. 333-338).

In our federal system, the states are primarily responsible for the protection of their citizens against criminal activity. Punishment of criminal offenders remains principally the obligation of the state governments. Criminals in their criminal activity, however, do not respect state boundaries. Modern transportation and communication facilities have resulted in multi-state criminal activities becoming common. To deal with the criminals themselves who commit a crime in one state and then flee to another state, proceedings for extradition are available. However, the extradition of an offender may well be nullified and prosecution fail should an essential but uncooperative witness be beyond the boundaries of a state wherein the prosecution must lie. Such difficulty also, of course, arises in cases wherein extradition is not involved.

The prompt and widespread acceptance of the Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings clearly evidences that such act supplied to the states a theretofore unavailable facility for their use in criminal law enforcement. Employment of the procedures provided by the act has been frequent,

particularly in the metropolitan areas which experience the constant ingress and egress of residents and nonresidents. In those areas, especially, the necessity of obtaining the presence of a witness from without the state in order successfully to prosecute for a criminal offense arises repeatedly.

Should this Court sustain the decision of the Supreme Court of Florida, the remaining states which have similar enactments will be deprived of this most useful and essential tool in their enforcement of their criminal laws. Believing that the decision of the Supreme Court of Florida is erroneous, this brief amicus curiae is submitted in support of the position of the People of the State of New York, petitioner in the cause.

ARGUMENT.

On behalf of amicus curiae, it is respectfully submitted to the Court that the brief of the petitioner in this case clearly and forcefully points out the erroneous basis of the decision of the Supreme Court of Florida. Amicus curiae respectfully joins in and supports the brief and argument of the petitioner in this cause and respectfully submits that the decision of the Supreme Court of Florida should, for the reasons set out in the brief of petitioner herein, be reversed.

Respectfully submitted,

JOHN ANDERSON, JR.,
Attorney General of Kansas.

APPENDIX I.

The following states, through their Attorneys General, join in the foregoing Brief of Attorney General of Kansas, Amicus Curiae:

John Patterson
Attorney General
State of Alabama

Bruce Bennett
Attorney General
State of Arkansas

Edmund G. Brown
Attorney General
State of California

Duke W. Dunbar
Attorney General
State of Colorado

John J. Bracken
Attorney General
State of Connecticut

Eugene Cook
Attorney General
State of Georgia

Graydon W. Smith
Attorney General
State of Idaho

Edwin K. Steers
Attorney General
State of Indiana

Norman A. Erbe
Attorney General
State of Iowa

Jo M. Ferguson
Attorney General
State of Kentucky

Jack P. F. Gremillion
Attorney General
State of Louisiana

Frank F. Harding
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State of Maine

C. Ferdinand Sybert
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State of Nebraska

Harvey Dickerson
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State of Virginia

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Francisco Espinosa, Jr.
Acting Attorney General
Commonwealth of Puerto Rico

APPENDIX II.

Table of states wherein Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings has been adopted.

State	Citation of Act
Arizona	A. R. S., §§ 13-1861 to 13-1866.
Arkansas	Ark. Stat., §§ 43-2005 to 43-2009.
California	West's Ann. Pen. Code, §§ 1334-1334.6.
Colorado	C. R. S. '53, 39-6-1 to 39-6-6.
Connecticut	Gen. St. 1949, § 8732.
Delaware	11 Del. C., §§ 3521-3526.
Florida	F. S. A., §§ 942.01-942.06.
Idaho	I. C., § 19-3005.
Indiana	Burns' Ann. St., §§ 9-1626 to 9-1630.
Kansas	G. S. 1949, 62-2801 to 62-2806.
Kentucky	K. R. S. 421.230-421.270.
Louisiana	L. S. A.-R. S. 15:152.1-15:152.5.
Maine	R. S. 1954, c. 148, §§ 24-28.
Maryland	Code Supp. 1956, Art. 27, §§ 701-707.
Massachusetts	G. L. (Ter. Ed.), c. 233, §§ 13A-13D.
Minnesota	M. S. A., §§ 634.06-634.09.
Mississippi	Code 1942, §§ 1892-1897.
Montana	R. C. M. 1947, §§ 94-9001 to 94-9007.
Nebraska	R. R. S. 1943, §§ 29-1906 to 29-1911.
Nevada	N. R. S., §§ 178.295-178.320.
New Hampshire	R. S. A. 613:1 to 613:6.

State	Citation of Act
New Jersey	N. J. S. A. 2A:81-18 to 2A:81-23.
New Mexico	1953 Comp., §§ 41-12-13 to 41-12-18.
New York	McKinney's Crim. Code, § 618-a.
North Carolina	G. S., §§ 8-65 to 8-70.
North Dakota	N. D. R. C. 1943, 31-0325 to 31-0331.
Ohio	R. C., §§ 2939.05-2939.29.
Oklahoma	22 Okla. St. Ann., §§ 721-727.
Oregon	O. R. S. 139.210-139.260.
Pennsylvania	19 P. S., §§ 622.1-622.7.
Puerto Rico	34 L. P. R. A. 1470.
Rhode Island	Gen. Laws 1938, c. 626, §§ 1-7.
South Carolina	Code 1952, §§ 26-301 to 26-313.
South Dakota	S. D. C., 34.2501-34.2504.
Tennessee	T. C. A., §§ 40-2429 to 40-2438.
Texas	Vernon's Ann. C. C. P., Art. 486a.
Utah	U. C. A. 1953, 77-45-11 to 77-45-17.
Vermont	V. S., §§ 2481-2492.
Virginia	Code 1950, §§ 19-242 to 19-252.
Washington	R. C. W. 10.55.010-10.55.110.
West Virginia	Code, 6246 (1)-6246 (6).
Wisconsin	W. S. A. 325.33.
Wyoming	W. C. S. 1945, §§ 10-1207 to 10-1209.